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Supreme Court of the United States

OCTOBER TERM, 1926.

No. 12[redacted] 412

BEDFORD CUT STONE COMPANY, et als.,
Appellants,

vs.

JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als.,
Appellees.

MOTION TO ADVANCE.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Solicitors and Attorneys for Appellants.

The Rieck Press, 87 Warren St., N. Y. Tel. Walker 1620.

Supreme Court of the United States

BEDFORD CUT STONE COMPANY, et als., Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als., Appellees.	October Term, 1926. No. 1255.

To the Honorable the Supreme Court of the United States:

Come now the Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Interstate Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company and The Hoosier Cut Stone Company, by Daniel Davenport, Charles Martindale and Walter Gordon Merritt, their counsel, and move that the above entitled cause be advanced and set down for argument at an early date, for the reasons hereinafter set forth.

Statement of Matters Involved.

This suit was commenced in the District Court of the United States for the District of Indiana on or about October 6, 1924.

The petitioners (herein called complainants) are each of them producers of Indiana lime stone in the State of Indiana. The respondents (herein called defendants) are certain stone cutters unions and their officers, and particularly the Journeymen Stone Cutters Association of North America, composed of about 150 local unions situated in the different states of the United States.

The complaint alleges a combination and conspiracy to restrain the complainants' interstate trade and commerce by calling strikes of stone cutters working for building contractors on buildings in states outside of Indiana, because stone produced by the complainants in Indiana is being used on or in connection with said buildings. An injunction and damages is sought.

On November 13, 1924, the District Court denied complainants' motion for a preliminary injunction, and on October 28, 1925, the Circuit Court of Appeals for the Seventh Circuit, in an opinion reported 9 Fed. (2nd) 40, affirmed said order.

Subsequently, by stipulation, the case was submitted to the District Court for final hearing on the same record as that presented for a preliminary injunction, together with the answer. On this final record the District Court dismissed the bill on April 21st, 1926.

Thereupon complainants appealed to the Circuit Court of Appeals from said order of dismissal, which court, on May 14, 1926, affirmed *per curiam* the judgment of dismissal.

The principal question involved is whether the alleged combination constitutes a violation of the Sherman Anti-Trust Law. There is no substantial dispute of facts.

The evidence shows that the Indiana producers operated on a union basis until about May 1, 1921, at which time the producers and the unions were unable to reach an agreement for future operation. The producers thereupon reorganized their producing forces, and the defendants, in order to compel unionization, undertook to enforce a union rule throughout the United States to the effect that members should not be allowed to work *on material* "cut by men working in opposition" to the union. Accordingly, complainants' customers suffered from strikes on buildings in various states where complainants' products were being used, and a general proscription of complainants' products by this means was threatened. Union representatives stated, in substance, that the purpose was to induce the complainants to unionize by forcing the contractors (complainants' customers) all over the country to refrain from using petitioners' products.

The evidence clearly shows that enforcement of the rule of the unions is applied at the point of delivery and use of petitioners' products in states other than the state of production for the avowed purpose of restraining such delivery and use.

The question of law is similar to the question presented in the case of *Brims* v. *United States*, 6 Fed. (2nd) 98, wherein the same Circuit Court of Appeals reversed a conviction for violation of the Anti-Trust Law. The *Brims* case is now No. 212 on the docket of this court, where it was brought by writ of certiorari, granted on motion of the United States.

In the *Brims* case it appeared—as in the case of *Paine* v. *Neal*, 244 U. S. 459—that agreements between the carpenters' union and certain contractors in Chicago per-

mitted the union workmen to discriminate against non-union woodwork, with the result that interstate shipments thereof from Oshkosh, Wisconsin, to Chicago, declined. The Circuit Court of Appeals found that the indictment charged an obstruction of commerce, but the proof merely disclosed an agreement not to work on non-union woodwork, and no intent to restrain interstate trade.

Reasons in Support of Application.

1. The appellants' business is without protection and is suffering irreparable damage from the acts of the defendants.

2. The case of *Brims* v. *United States*, No. 212, is already before this court, the briefs having been filed, and will be heard in the near future. The issues in that case are so similar to those presented in the case at bar that a decision in that case might foreclose the appellants hesein on the principal issue. The appellants therefore desire to be heard before the *Brims* case is decided.

3. The question involved is one of great public interest because similar situations are arising in other industries, and because the appellants' annual sales are about $15,000,000.

WHEREFORE the appellants respectfully pray that this case be advanced for an early hearing.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Solicitors and Attorneys for Appellants.

SUPREME COURT OF THE UNITED STATES.

BEDFORD CUT STONE COMPANY, et als., Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als., Appellees.	October Term, 1926. No. 1255.

To the Appellants and
FREDERICK VAN NUYS,
American Bank Building,
Indianapolis, Indiana:

You and each of you will please take notice that on Monday, November 1, 1926, at the opening of court on that day, or as soon thereafter as counsel can be heard, the appellants will move the Supreme Court of the United States to advance the hearing of the above entitled cause.

New York City, October , 1926.

Yours, etc.,

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Counsel for Appellants.

Service of a copy of the foregoing petition and notice acknowledged this day of October, 1926.